IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2472 OF 2007

Konark Infrastructure Pvt.Ltd.
A Private Limited company registered under
the Indian Companies Act, 1956, having
registered office at Ground Floor,
Sapna Talkies, Sapna Garden,
Ulhasnagar – 421 003. .. Petitioner

v/s.

1. Chief Executive Officer,
Pune Cantonment Board,
Having his office at Pune
Cantonment Board, Pune.

2. Pune Cantonment Board,
Pune

3. Ghai Constructions,
Shop No.2, Tulsi Arcade,
CIDCO, Aurangabad. .. Respondents

Mr. A.A. Kumbhakoni with Mr. Ranvir S. Shekhavat for the petitioner.
Mr. K.J. Presswala i/by M/s. Mulla & Mulla & CBC for the respondent Nos.1 and 2.
Mr. P.K. Joshi for the Respondent No.3.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.
DATED : 19TH APRIL, 2007

ORAL JUDGMENT (Per F.I. Rebello, J.)

The petitioner in the present petition had originally challenged the decision of respondent No.2 not to consider the commercial bid of the petitioner herein. Subsequently, the petition was amended and respondent No.3 who was the successful bidder, has been added as respondent. The entire contention of the petitioner is that the tender documents though not attested/signed in the manner required, copies thereof were already in possession of the respondent No.2 at the time when the petitioner had applied for a copy of the tender document. One of the conditions to obtain the tender document was to show the proof of those documents signed/verified in the manner laid down. He, therefore, submitted that this was purely an irregularity which could have been waived by the respondent No.2. Apart from that it is submitted that the petitioner was the highest bidder inasmuch as his bid was in the sum of Rs.59,09,094/- whereas the offer made by respondent No.3 was Rs.58,07,000/-. It is submitted that respondent No.2 as a public authority, public interest requires that the highest bids should have been accepted. In these circumstances, the petitioner prayed that this court should interfere with the process of tendering and awarding of the bids in exercise of its extraordinary jurisdiction.

2. On the other hand, on behalf of the respondent No.2, the learned counsel has drawn our attention to various clauses of the tender document. It is submitted that there is no dispute that the petitioner did not enclose the documents duly signed/verified, as required, alongwith the tender form. The fact that they may have submitted the documents earlier is irrelevant. It is further submitted that it is not the case of the petitioner that action of the respondents is arbitrary and/or any act of theirs has violated the procedure or

tantamount to show favourtism in favour of the respondent No.3. Once the respondent has gone through the tender process and chose not to waive the tender conditions that by itself is no ground to interfere as that is purely in the realm of contract. It is further submitted that the work order was issued in favour of the respondent No.3 on 2.4.2007. Subsequent to that, respondent No.3 has deposited a sum of Rs.58,07,000/- as required, on 9.4.2007. An agreement has been entered into on 17.4.2007. The learned counsel has drawn our attention to the judgment of the Supreme Court in the case of Jag dish Mandala v. State of Orissa and ors., Civil Appeal No.5699 of 2006, decided on 11.12.2006.

3. On behalf of the respondent No.3-the newly added respondent, the learned counsel submits that apart from depositing with Respondent No.2 a sum of Rs.58,07,000/-, the petitioner has already appointed necessary staff on 18th April, 2007. They have printed tickets and booked flats for the staff members. They have incurred expenditure of Rs.4 lakhs only for paying advance for booking of flats. The respondent No.3 has then invested monies pursuant to the work order in their favor. Therefore, this court ought not to interfere. Apart from that, the respondent No.2 has submitted that no illegality has been committed warranting interference by this court in the exercise of its extraordinary jurisdiction.

4. We have heard the learned counsel for the parties. In our opinion, it is possible to say that failure to attest/sign the documents in the manner required may be a minor defect which perhaps could have been waived by respondent No.2. It is, however, not open to this court in the absence of the petitioner's pointing out any

arbitrariness on their behalf to direct the respondent No.2 who is to make the judgment that they should have exercised the discretion in a particular manner. Apart from that we find that respondent No.3 after being issued the work order, has deposited the initial amount as required under the terms of the agreement and made other investments.

5. In view of the above, in our opinion , this is not a fit case to interfere in our extraordinary jurisdiction. Petition is rejected. No order as to costs.

(F.I. REBELLO, J.)

(R.M. SAVANT, J.)